IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 217 of 2000
with
CRIMINAL APPEAL NO.360 OF 2000

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL
HON'BLE MR.JUSTICE H.B.ANTANI
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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

Criminal Appeal No.217 of 2000:

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KANUBHAI PURSOTTAMBHAI BARIYA – Appellant
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :

MR G RAMAKRISHNAN for the Appellant
MS HANSA PUNANI APP for the Respondent

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Criminal Appeal No.360 of 2000:

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SHANABHAI POOJABHAI VAGHELA &
KHODABHAI DHULABHAI PARMAR – Appellants
Versus
STATE OF GUJARAT - Respondent

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Appearance :

MS ROHINI V ACHARYA for the Appellants
MS HANSA PUNANI, APP for the Respondent

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CORAM :HON'BLE MR.JUSTICE J.M.PANCHAL
HON'BLE MR.JUSTICE H.B.ANTANI

Date : 05/07/2005

COMMON ORAL JUDGMENT:

(Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

Above-numbered appeals filed under Section 374 (2) of the Code of Criminal Procedure, 1973 are directed against common judgment dated February 14, 2000 rendered by the learned Additional Sessions Judge, Court No.6, Ahmedabad in Sessions Case No.218 of 1999 by which the sole appellant in Criminal Appeal No.217 of 2000 and two appellants in Criminal Appeal No.360 of 2000 are convicted under Sections 17, 18 read with 29 and 54 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the Act", for short) and each sentenced to suffer RI for 12 years and fine of Rs.2 lakhs in default R.I. for one year. As both the appeals are

directed against the same judgment delivered in Sessions Case No.218 of 1999, this Court proposes to dispose them of by this common judgment.

2 Mr V.J. Solanki, who was then discharging duties as PI, State Narcotic Cell, Gandhinagar, received an information at about 10 AM on June 17, 1999 from his informant that two persons from village Valetva with their one accomplice were engaged in trafficking of opium and ganja and were to pass from Petlad to Khambhat between 14.00 and 15.00 hours with opium and ganja in an auto rickshaw. In the information it was also stated that one of the persons i.e. Kanubhai Pursottambhai Bariya (the appellant in Criminal Appeal No.217 of 2000) was wearing light sky blue coloured pant and white blue lining shirt whereas another person i.e. Shanabhai Poojabhai Vaghela (appellant no.1 in Criminal Appeal No.360 of 2000) was wearing white trouser and open shirt and the third person i.e. Khodabhai Dhulabhai Parmar (appellant no.2 in Criminal Appeal No.360 of 2000) was wearing white open shirt having blue linings. The information received was reduced into writing by Mr Solanki. He made report to the Superintendent of Police, State Narcotic Cell, Ahmedabad who is his immediate official superior. Thereafter, he summoned PSI Mr A.A.Pathan, PSI Mr U.M. Jadav, Head Constable Pavansinh Parmar, Head Constable Hirabhai Kapadiya and

Head Constable Vinodbhai Dantani as well as SRP personnel and conveyed to them the secret information received by him. Necessary equipments like weighing scale, sealing wax, kit box, etc. were requisitioned as it was decided to carry out a raid. The members of the raiding party thereafter proceeded in a police jeep via Nadiad and reached Ganpati Mandir of village Rangipura. From village Rangipura services of two panch witnesses were requisitioned. Thereafter, secret watch was arranged near Manglam party plot situated on Nadiad-Khambhat Highway. At about 4.30 PM one auto-rickshaw coming from Petlad side with persons whose description was given in secret information was spotted. The rickshaw was stopped and the occupants thereof were interrogated. On interrogation one person disclosed his name to be Kanubhai Parshottambhai Baria, i.e. the appellant in Criminal Appeal No.217 of 2000 whereas second person disclosed his name to be Shanabhai Poojabhai i.e. the appellant no.1 in Criminal Appeal No.360 of 2000 and the third person disclosed his name to be Khodabhai Dhulabhai Parmar i.e. the appellant no.2 in Criminal Appeal No.360 of 2000. P.I. Mr Solanki informed the three persons that he had received an information that they were dealing in opium and ganja and therefore it was necessary to search them. P.I. Mr Solanki thereafter informed the three accused that if so required by them, they could be taken

before a Gazetted Officer or Magistrate for search. However, the three appellants declined the offer. Thereupon, the belongings of all the occupants were searched. It was found that accused Kanubhai Parshottam Baria was carrying a dark blue coloured old cotton bag. On opening the same a blue coloured plastic bag was found. On opening the said plastic bag it was found that it was containing another plastic bag wherefrom black coloured substance was found and it was ascertained to be opium on smelling. The substance found was weighed by Head Constable, Balwantsinh Nansinh Parmar. The weight of the substance found was 500 g. From the substance found, samples were drawn and sealed as required by law. As far as appellant no.1 in Criminal Appeal No.360 of 2000 i.e. Shanabhai Poojabhai Vaghela is concerned it was found that he was carrying a while coloured broken plastic bag. On search of the said bag, another plastic bag was found wherein the flowering and/or fruiting tops of cannabis plant were found. The said substance was analysed with the help of kit box carried by the members of the raiding party and it was prima facie found to be ganja. The substance found was weighed by Head Constable, Balwantsinh Parmar and its weight was found to be 2 kg. From the quantity of ganja found, a sample of 100 g was drawn, which was sealed as required by law. Thereafter, the plastic bag with handle carried by

Khodabhai Parmar, i.e. the appellant no.2 in Criminal Appeal No.360 of 2000 was searched. From the said bag also flowering and/or fruiting tops of cannabis plants were found. The substance found was weighed by Head Constable, Balwantsinh Parmar. The weight of substance was found about 1 kg out of which sample of 100 g was drawn and sealed. P.I. Mr Solanki demanded from the appellants pass or permit authorising them to possess opium and/or ganja. The accused could not produce any such authorisation. Therefore, all three appellants were arrested as they committed offences punishable under the Act. After arrest seizure memo was issued to the accused concerned. It was further found by Mr Solanki that the accused were travelling in auto rickshaw bearing registration No.GJ-7-V-9187 of Bajaj make. In presence of panch witnesses the driver was interrogated. He disclosed his name to be Munavar Nazirkhan Musalman, residing at Petlad. The rickshaw was also searched but nothing incriminating was found and therefore the rickshaw driver was permitted to go. P.I. Mr Solanki also informed each accused the grounds of arrest and conveyed intimation to the relatives of the accused that they were arrested with referece to commission of offences punishable under the Act. He thereafter went to Gandhinagar Zone Police Station and lodged his complaint against the accused, which was numbered as II C.R.No.9/99. P.I.

Mr Solanki handed over the accused and muddamal to Mr J.B. Rana, who was then P.S.I. C.I.D. Crime Narcotic Cell. PSI Mr Rana kept the muddamal in safe custody. He despatched the samples to FSL for analysis through Head Constable Balwantsinh. The muddamal was analysed by the FSL. The report of the FSL indicated that the substance seized from possession of accused Kanubhai Parshottam Baria was opium whereas the substance found from possession of accused Shanabhai Pujabhai Vaghela and Khodabhai Dhulabhai Parmar was ganja. On completion of the investigation the accused no.1 i.e., Kanubhai Parshottambhai Baria was charge-sheeted for commission of offences punishable under Sections 8(c) and 17 of the Act whereas accused nos.2 and 3 were charge-sheeted for commission of offence punishable under Section 8(c) and 20(b)(i) of the Act in the court of the learned Metropolitan Magistrate, Ahmedabad. As the offences punishable under the Act are triable by a Special Judge, the case was committed to City Sessions Court, Ahmedabad for trial where it was numbered as Sessions Case No.218 of 1999.

3 The learned Additional Sessions Judge, Court No.6, Ahmedabad to whom the case was made over for trial framed necessary charge against the sole appellant in Criminal Appeal No.217 of 2000 under

Section 8(c) and 17 of the Act and against appellants in Criminal Appeal No.360 of 2000 under Section 8(c) and 20(b)(i) of the Act. It was read over and explained to them. They pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined (1) panch witness Dahyabhai Maganbhai Bhoi as P.W.No.1 at exh.11, (2) P.I. Mr Vakhatsinh Jetisinh Solanki, as P.W.No.2 at exh.12, (3) Head Constable, Balwantsinh Nansinh as P.W.No.3 at exh.31, (4) ASI, Baldevji Chhanaji Mena, as P.W.No.4 at exh.32, (5) Auto Rickshaw driver, Manwarkhan Nazirkhan Pathan as P.W.No.5 at exh.34 and (6) PSI, Mr Jasubha Bapusaheb Rana as P.W.No.6 at exh.36 to prove its case against the appellants. The prosecution also produced documentary evidence such as entry No.87 from station diary maintained at State Narcotic Cell indicating receipt of secret information by PI Mr Solanki at exh.13, entry from station diary indicating handing over of accused and muddamal to PSI, Jasubhai Rana at exh.14, report sent by P.I., Mr Solanki to his immediate official superior as required by sub-section (2) of Section 42 of the Act at exh.17, complaint lodged by P.I. Mr V.J. Solanki at exh.18, panchnama prepared at the time of seizure of contraband items from possession of the appellants at exh.19, intimation given to the accused indicating compliance of Section 50 of the Act at exh.20, the seizure memo served on accused Kanubhai at

exh.21, seizure memo served on accused Shanabhai at exh.22, the seizure memo served on accused, Khodabhai Parmar at exh.23, intimation given to Parshottambhai Madhabhai Baria that Kanubhai Parshottambhai Baria was arrested for commission of the offences punishable under the Act at exh.24, intimation given to Maganbhai Vagjibhai Parmar informing that accused Khodabhai Dhulabhai Parmar was arrested for commission of the offences punishable under the Act at exh.26, report under Section 57 of the Act to the Superintendent of Police, Narcotic Cell informing him that the raid was carried out and contraband items were seized at exh.27, report to the learned Magistrate having jurisdiction in the matter at exh.28, intimation to Mr J.B. Rana requesting him to investigate the case at exh.29, forwarding letter with which muddamal was sent to FSL for analysis at exh.30, receipt issued by FSL for having received the muddamal for analysis at exh.33, report of FSL at exh.35, etc. in support of its case against the appellants.

4 After recording of evidence of prosecution witnesses was over, the learned Judge explained to the appellants the circumstances appearing against them in the evidence of prosecution witnesses and recorded their further statements as required by Section 313 of the Code of Criminal Procedure, 1973. In the further statement each appellant claimed that he

was innocent. However, no defence evidence was led by any of them.

5 On appreciation of evidence adduced by the prosecution, the learned Judge held that it was proved by the prosecution through reliable testimony of panch witness Dahyabhai Maganbhai Bhoi read with that of PI Mr V.J.Solanki and Head Constable Balwantsinh Parmar and others that pursuant to the secret information received by Mr Solanki the cotton bag, carried by the original accused no.1 and plastic bags carried by original accused nos.2 and 3 were searched and the sole appellant of Criminal Appeal No.217 of 2000 was found in possession of opium whereas appellants in Criminal Appeal No.360 of 2000 were found in possession of ganja without pass or permit and therefore the appellant in Criminal Appeal No.217 of 2000 committed offence punishable under Section 17 whereas the appellants in Criminal Appeal No.360 of 2000 committed offence punishable under Section 18 of the Act. It was found that as per the information received all the three accused were travelling in one rickshaw, which was coming from Petlad and, therefore, all the accused were liable to be convicted under Section 29 of the Act. The learned Judge after referring to the testimony of P.I. Mr Solanki held that provisions of Section 42(2) and Section 50 were complied with. The learned Judge noticed that the samples were properly sealed and kept in safe custody as a result of which possibility

of tampering with the same was ruled out. In view of above-referred-to conclusions, the learned Judge has convicted the appellants under Section 17 and 18 read with Section 29 and 54 of the Act and imposed sentences referred to earlier by judgment dated February 14, 2000 giving rise to above numbered two appeals.

6 Mr G. Ramakrishnan, learned counsel of the appellant in Criminal Appeal No.217 of 2000 and Ms Rohini V Acharya, learned counsel of the appellants in Criminal Appeal No.360 of 2000 contended that a bare perusal of testimony of panch witness, Dahyabhai Bhoi, recorded at exh.11 indicates that he was not willing to act as panch witness and that his signatures were obtained forcibly on the documents prepared by the members of the raiding party as a result of which the conviction of the appellants is vitiated. According to the learned counsels of the appellants, the evidence tendered by panch witness, Dahyabhai would show that narcotic drugs were not found from the possession of the appellants and, therefore, the appellants could not have been convicted for the commission of offences punishable under the Act. It was argued that no verification of muddamal was done in presence of panch witnesses and therefore the impugned judgment should be reversed. After referring to the testimony of

panch witness, Dahyabhai Bhoi it was argued that panch witness does not state before the Court that PI, Mr Solanki had informed the accused that they had right to be searched in presence of a Gazetted officer or a Magistrate and as the mandatory provisions of Section 50 of the Act were not complied with, the appellants should be acquitted. According to the learned counsels of the appellants, a copy of the information reduced into writing was not forwarded by PI, Mr Solanki to his immediate official superior and as Mr Solanki violated mandatory provisions of Section 42(2) of the Act, the appeal should be accepted. The learned counsels of the appellants emphasised that the learned Judge of the trial Court has not appreciated the evidence on record in its true perspective and, therefore, the appeals should be allowed.

7 Ms Hansa Punani, learned APP for the State, asserted that the testimony of panch witness, Dahyabhai Bhoi in no uncertain terms indicates that he had willingly acted as a panch witness and as he has fully supported the prosecution case, the argument that he had not acted as a panch witness willingly or that his signatures on documents were obtained forcibly or that no verification of muddamal was done in his presence should not be accepted by the Court. With reference to grievance made by the learned

counsel of the appellants regarding non compliance of Section 50 of the Act, Ms Punani, learned APP pleaded that what was searched by PI, Mr Solanki was a bag and/or plastic bag carried by the respective appellant but not the person of any of the appellants and, therefore, provisions of Section 50 of the Act would not be applicable to the facts of the case. The learned counsel of the State Government pointed out that it is nowhere provided in the statute that the report to be sent by the empowered officer under Section 42(2) should invariably a carbon copy of an original and, therefore, report made by PI Mr Solanki to his immediate official superior, which is on record of the case at exh.17 should be treated as sufficient compliance of provisions of Section 42(2) of the Act. It was asserted that cogent and convincing reasons have been assigned by the learned Judge of the trial Court, who had advantage of observing the demeanor of the witnesses and as the learned counsel of the appellants have failed to dislodge them, the appeals, which lack merit should be dismissed.

8. This Court has heard Mr G.Ramakrishnan and Ms R.V.Acharya, learned counsels of the appellants as well as Ms Hansa Punani, learned APP for the State at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case

and the entire evidence on record with reference to broad and reasonable probabilities of the case. The plea that witness Dahyabhai Bhoi was not willing to act as panch witness in the case or that his signatures were obtained forcibly on documents prepared by the members of the raiding party or that no verification of the muddamal seized was done in his presence and therefore, the impugned judgment should be set aside, is devoid of merit. As noted earlier, testimony of panch witness, Dahyabhai Bhoi is recorded at exh.11. In his substantive evidence recorded before the Court, the witness has stated that he is resident of Petlad town and is doing labour work. According to him, when he was doing labour work near village Rangaipura with another panch Budhabhai, two policemen had approached them and asked them to act as panch witnesses in the case. It is further mentioned by him that as he was doing labour work in company of another panch witness, Budhabhai they had initially declined to act as panch witnesses. Further, he has stated that again two policemen had approached them and persuaded them to act as panch witnesses and, therefore, they had acted as panch witnesses. This statement made by Dahyabhai Bhoi cannot be construed to mean that he had acted as panch witness against his wishes. In his cross-examination, it was suggested to him that he had connection with the police and, therefore, he had acted as a

panch witness. However, this suggestion is emphatically denied by him. Further, during his cross-examination two times it was suggested by the defence itself that muddamal was recovered from the appellants in his presence and this suggestion was accepted by the witness as true. Thus, it is the case of appellants themselves that contraband items were recovered from them in presence of panch witnesses and their case is accepted to be true by panch Dahyabhai. Therefore, it is wrong to contend that the muddamal was not seized from the possession of the appellants by the members of the raiding party in the presence of panch witness. Further, the suggestion made by the defence that three accused were not arrested in his presence is also emphatically denied by him. Similarly, the suggestion made by the defence that the muddamal which was identified by him in the court room was not seized from the possession of the appellants is also denied by him. A fair reading of the testimony of panch witness makes it very clear that he had acted as panch witness willingly and that the whole procedure of search and seizure was carried out not only in his presence but also in the presence of another panch witness Budhabhai and that contraband items were seized from the appellants in his presence. Therefore, the first argument which is based on appreciation of the evidence of panch witness cannot be accepted and is hereby rejected.

9 As far as compliance of provisions of Section 50 of the Act is concerned, this Court finds that what was searched was bag and/or plastic bags carried by the concerned appellant and not his person. In State of Himachal Pradesh v. Pawan Kumar, (2005) 4 SCC 350 the Supreme Court has authoritatively ruled that a bag, a briefcase or any such article or container etc. can under no circumstances be treated as body of a human being. What is emphasised therein is that these articles are given a separate name and are identifiable as such. According to the Supreme Court, they cannot even remotely be treated as a part of body of a human being. Elaborating this point, it is observed by the Supreme Court that depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, a thaila, a jhola, a gathri, a holdall, a carton, etc. of varying size, dimension or weight and while carrying or moving along with them some extra effort or energy would be required and would have to be carried either by the hand or hung on the shoulder or back or placed on the head. What is laid down as principle in the said decision is that in common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc and, therefore, it is not possible to

include these articles within the ambit of word “person” occurring in Section 50 of the Act. In view of the principle laid down in the above quoted decision, this Court is of the firm opinion that the provisions of Section 50 are not attracted to the facts of the case as person of no appellant was searched but thing carried by respective appellant was searched.

10 Even if for the sake of argument it is assumed that provisions of Section 50 were applicable to the facts of instant case, this Court finds that the provisions of Section 50 were fully complied with by Mr Solanki. Mr Solanki in his substantive evidence before the Court has asserted that before things carried by the appellants were searched, he informed the appellants that they could be searched either in presence of a Gazetted Officer or in presence of a Magistrate if so desired but the offer made by him was declined by the appellants. Though Mr Solanki is cross-examined at length, nothing could be brought on record to impeach his credibility. Regarding compliance of Section 50 and other _____ particulars, this witness stands fully corroborated by the testimony of Head Constable, Balwantsinh Nanusinh Parmar, who is examined at Exh.31. Mr Balwantsinh Parmar has also asserted in his evidence before the Court that Mr Solanki had offered the appellants to be searched in presence of a Gazetted Officer or a

Magistrate but the offer was declined by the appellants. The fact that offer, as contemplated by Section 50, was made by PI Mr Solanki is reflected in contemporaneous document i.e. panchnama which is produced in record of the case at exh.19. As noted earlier, the contents of panchnama at exh.19 stand amply proved through the reliable testimony of panch witness, Dahyabhai Bhoi recorded at exh.11. Out of abundant precaution, Mr Solanki had in writing informed the appellants that if so desired, they could be searched in presence of a Gazetted Officer or a Magistrate and that no such desire was expressed by any of the appellants. That communication is produced by the prosecution at exh.20 on the record of the case. Exh.20 is not only signed by the panch witnesses but also by the appellants. Having regard to the reliable evidence led by the prosecution there is no manner of doubt that mandatory provisions of Section 50 of the Act were complied with and therefore the appellants are not entitled to be acquitted on the ground there was non-compliance of Section 50 of the Act.

11 The last submission that Mr Solanki did not forward the carbon copy of original information, which was reduced into writing to his immediate official superior and therefore there is breach of provisions of Section 42(2) of the Act cannot be accepted. The first question that arises

for consideration is whether S. 42 of the Act is applicable to the facts of the case. Section 42 authorises an officer of the departments enumerated therein, to enter into and search any building, conveyance or an enclosed place, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug or psychotropic substance, etc. is kept or concealed in any building, conveyance or enclosed place. Section 43 of the Act provides that any officer of any of the departments mentioned in Section 42 may seize in any public place or in transit any narcotic drug or psychotropic substance etc. in respect of which he has reason to believe that an offence punishable under the Act, has been committed. He is also authorised to detain and search any person whom he has reason to believe to have committed an offence punishable under the Act. Explanation to Section 43 lays down that for the purposes of this Section, the expression “public place” includes any public conveyance, hotel, shop or other place intended for use by or accessible to the public.

12 Sections 42 and 43, therefore, contemplate two different situations. Section 42 contemplates entry into and search of any building, conveyance or enclosed place, while Section 43 contemplates a seizure made in any

public place or transit.

13 In instant case, there is no dispute that rickshaw bearing registration No.GJ-7-V-9187 is a means of public conveyance and intended for use by the public. The appellants were travelling in the same and it was intercepted on Petlad-Khambhat highway. This is quite evident from testimony of rickshaw driver, Manavarkhan Pathan recorded at exh.34. Under the circumstances, this Court is of firm view that provisions of Section 42 are not attracted and provisions of Section 43 shall be applicable to the facts of case on hand.

14 Even if it is assumed for sake of argument that provisions of Section 42 are applicable to instant case, this Court finds that Section 42(1) of the Act inter alia provides that where an empowered officer has reason to believe from personal knowledge or information given by any person, and taken down in writing, that any Narcotic Drug or Psychotropic Substance, or controlled substance in respect of which an offence punishable under Chapter IV of the NDPS Act has been committed or any document or any document or other article which may furnish evidence of the commission of such offence is concealed in any building, conveyance or enclosed place, he

may between sunrise and sunset enter into and search any such building, conveyance or place and seize such drug or substance and also detain and search any person whom he has reason to believe to have committed the offence punishable under Chapter-IV. Sub-section (2) of Section 42 provides that where an officer takes down any information in writing under sub-section (1) or records ground for his belief under the proviso thereto, he shall within 72 hours send a copy thereof to his immediate official superior. The object of NDPS Act is to make stringent provisions for control as also regulation of use of certain drugs and substances. With an intent to avoid the abuse of provisions of the Act by the officers, safeguards like the one available in Section 42(2) are introduced on the statute book. The purpose is to ensure that the empowered officer on receiving an information should reduce the same into writing and also record reasons for his belief while carrying out the search and arrest and also report substance of information received to his immediate official superior to ensure that a false and fabricated case by empowered officer is not made out against innocent persons. The receipt of such a report would ensure that the empowered officer does not misuse his power and make search and seizure only in genuine cases. On the basis of report received, the official superior would be in a position to make immediate enquiries to convince himself that there

was in fact a genuine information and genuine seizure. If this purpose is to be achieved, it does not make any difference whether the information sent is carbon copy of the information received and reduced into writing or in any other form. It is nowhere provided in Section 42(2) that the report that the empowered officer is expected to forward to his immediate official superior should invariably be a carbon copy of an original. If the interpretation as suggested by the learned counsels of the appellants is accepted, it would mean that while reducing the information into writing, the empowered officer will have to prepare a carbon copy while complying with the provisions of Section 42(1) of the Act. Such a requirement cannot be read into Section 42(1) of the Act. Reading the provisions of Section 42 of the Act, as suggested by the learned counsels of the appellants would amount to re-writing the statutory provisions, which is not permissible to a court of law. Further, the interpretation canvassed by the leaned counsels of the appellants run contrary to avowed object of the Act and would result into delay of search and seizure. Therefore, such a construction will have to be avoided. Having noticed the object of Section 42 of the Act, it would be relevant to refer to certain decisions on the point to find out whether the authorised officer is obliged to send a carbon copy of the information received and reduced into writing by him to his immediate official superior.

In INTEZAR AHMED SULTAN AHMED SHAIKH V. STATE OF GUJARAT, 1996 (2) GLR 554 complainant Mr Rohit who was Superintendent of Customs (Preventive), Ahmedabad received a secret information that the appellant who was dealing in contraband drug i.e. charas was likely to carry the same on July 8, 1986. The information was reduced into writing and consequential raid was carried out. On trial, the appellant in the said case was convicted. It was argued before the High Court that under the Customs Act such information was required to be reduced into writing in DRI form and as the same was not reduced into writing in DRI form nor sent to the immediate official superior in the said form, the conviction was liable to be set aside for breach of provisions of Section 42(2) of the Act. The evidence of the customs officer indicated that immediately after reducing in writing, the information was placed for perusal of Assistant Collector, who was immediate official superior of Superintendent of Customs. It transpired from the evidence led in that case that the Assistant Collector took note of it and duly initialed the same. While considering the question of non-compliance of Section 42(2) of the Act, the Division Bench of this Court has held that only thing required under the law is that the information received should be taken down in writing may be in any form, in any register, in any book or even on a sheet of paper and copy of the

information reduced into writing should be sent to the official superior. What is highlighted by the Division Bench of this Court in the said decision is that such a copy is to be sent where the immediate official superior is not available at the same place and if the information is shown personally to the superior officer who is present at the place and got initialed then it is sufficient compliance of provisions of Section 42(2) of the Act.

15 Again in Harnek Singh v. State of Rajasthan, 1998(1) Cr.LJ 299 the secret information reduced into writing was conveyed through wireless message to the superior officer. On examination of the scheme of Section 42(2) of the Act the learned Single Judge of the Rajasthan High Court has held that conveying the substance of secret information through wireless message to the superior officer would not amount to non-compliance of provisions of Section 42(2) of the Act. Thus, the judicial trend while interpreting the provisions of Section 42(2) of the Act is very clear and it is that the information received and reduced into writing should be conveyed to immediate official superior so that the powers are not abused by junior officer. Reverting to the facts of the case, this Court finds that the information which was reduced into writing by Mr Solanki was conveyed to Dy. S.P., Narcotic Cell, who was his immediate official superior and this is

quite clear from the contents of exh.17. Under the circumstances, the appellants cannot be acquitted on the ground that provisions of Section 42(2) of the Act were complied with by P.I., Mr Solanki. The plea based on non-compliance of Section 42(2) of the Act has no substance and is hereby rejected.

16 Except the above-referred-to contentions which have been dealt with by this Court, no other argument is advanced by the learned counsels of the appellants in support of above numbered two appeals.

17 As the Court does not find merit in any appeal, both the appeals are liable to be dismissed.

18 For the foregoing reasons, both the appeals fail and are dismissed. Muddamal be disposed of in terms of directions given by the learned Judge of the trial Court in the impugned judgment.

(J.M.Panchal, J.)

(H.B.Antani, J.)

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